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2 OF COUNSEL
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E-filing

ORIGINAL
FILED
2011 MAR -8 P 3:29
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

5 Attorneys for Plaintiff
6 American Small Business League

7 UNITED STATES DISTRICT COURT
8 NORTHERN DISTRICT OF CALIFORNIA
9

MEJ

10 AMERICAN SMALL BUSINESS LEAGUE

CV11 1077
CASE NO.

11 Plaintiff,

COMPLAINT FOR INJUNCTIVE
RELIEF

12 v.

FREEDOM OF INFORMATION ACT
(5 U.S.C. 552 (a)(3)(A))

13
14 DEFENSE CONTRACT AUDIT AGENCY
15 and THE UNITED STATES AIR FORCE

16 Defendants.
17

18 COMPLAINT FOR INJUNCTIVE RELIEF

19 1. This is an action under the Freedom of Information Act, 5 U.S.C. § 552,
20 ("FOIA") for injunctive and other appropriate relief to compel the disclosure and release of
21 documents improperly withheld from Plaintiff by the Department of the DCAA.
22

23 JURISDICTION AND VENUE

24 2. This court has both subject matter jurisdiction over this action and personal
25 jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B). This court also has jurisdiction
26 over this action pursuant to 28 U.S.C. § 1331. Venue lies in this district under 5 U.S.C. §
27 552(a)(4)(B).
28

THE PARTIES

3. Plaintiff is the American Small Business League ("ASBL"), an organization incorporated in California which has its principal place of business in Sonoma County, California. ASBL is a national organization established to research and focus public attention on emerging small business issues and to otherwise promote the interests of small businesses. ASBL's activities include the review of evolving federal and state government policy and procedures to determine possible impact on small business. .

4. Defendant Defense Contract Audit Agency (hereinafter "DCAA") and United States Air Force are "agencies" within the meaning of 5 U.S.C. § 552 (f).

PLAINTIFF'S FOIA REQUEST AND THE DCAA'S RESPONSE

5. On or about April 1, 2010 pursuant to the Freedom of Information Act ("FOIA"), ASBL requested records from DCAA consisting of "The most recent completed audit conducted by the DCAA". A copy of the request is attached hereto as Exhibit "A".

6. On or about April 1, 2010 ASBL was informed by telephone by DCAA that DCCA did not maintain copies of its audits, but instead turned them over to the audited agency. ASBL requested a written response to its FOIA request. On April 14 ASBL submitted an appeal of the Agency's verbal response to its FOIA request, on the grounds that DCAA had not provided a written response to the FOIA request. A copy of ASBL's April 14 appeal is attached hereto as Exhibit "B"

7. On May 7, 2010, ASBL receive a letter from DCAA regarding ASBL's FOIA request in which DCAA acknowledged receipt of the request, and stating that the request had been referred to the 330th Fighter Sustainment Group of the United States Air Force (herinafter "USAF"). A true and correct copy of DCAA's May 7th letter is attached hereto as Exhibit "C"

8. Following the referral of the request on May 7, 2010, DCAA and USAF failed to provide any further response to ASBL's FOIA request within the time afforded by law. On June 11, 2010 ASBL appealed the non- response to its FOIA request addressing the appeal to both DCAA and USAF. A true and correct copy of ASBL's June 11th appeal letter is attached here as exhibit "D"

9. Neither DCAA nor USAF responded to ASBL's FOIA request or the Appeal in the time allowed by FOIA or at all.

10. ASBL has a right of access to the documents requested pursuant to 5 U.S.C. § 552 (a)(3), and there is no legal basis for the DCAA's denial of such access.

Accordingly, ASBL seeks an order from this court compelling the DCAA to provide the requested information.

CAUSE OF ACTION

Violation of the Freedom of Information Act for Wrongful Withholding of Agency Records

11. The DCAA and/or USAF has wrongfully withheld documents requested by ASBL.

12. ASBL has exhausted the administrative remedies with respect to the DCAA's and/or USAF wrongful withholding of the requested documents.

13. ASBL is entitled to injunctive relief and an order from this Court compelling an immediate release and disclosure of the requested documents.


PRAYER FOR RELIEF

WHEREFORE, ASBL prays that this Court:

- A. Issue an order compelling DCAA and/or USAF to disclose all responsive documents in their entirety;
- B. Provide for expeditious proceedings in this action;
- C. Award ASBL its costs and reasonable attorneys' fees incurred in this action;
- and
- D. Grant such other relief as the Court may deem just and proper.

Dated: March 8, 2011

GUTIERREZ & ASSOCIATES

By: 
ROBERT E. BELSHAW
Attorneys for Plaintiff

20kb

Kevin Baron

From: Kevin Baron
Sent: Thursday, April 01, 2010 11:09 AM
To: 'DCAA-FOIA@dcaa.mil'
Subject: Freedom of Information Act Request
April 1, 2010

Headquarters, Defense Contract Audit Agency
Attn: CMR, FOIA Service Center
8725 John J. Kingman Road, Suite 2135
Fort Belvoir, VA 22060-6219

Re: Freedom of Information Act Request

Dear FOIA Officer:

This is a request under the Freedom of Information Act. I request that a copy of documents containing the following information be provided to me:

- The most recent completed audit conducted by the DCAA.

In order to help to determine my status for purposes of determining the applicability of any fees, you should know that I am the Director of Government Affairs for a small business advocacy group and am seeking information for use in our group's research and not for commercial use.

The American Small Business League is willing to pay fees for this request up to a maximum of \$200.00. If you estimate that the fees will exceed this limit, please inform me first.

I have included a telephone number at which I can be contacted during the hours of 8 a.m. to 5 p.m. Pacific, if necessary to discuss any aspect of my request.

Thank you for your consideration of this request.

Sincerely,
Kevin Baron

Kevin Baron, Director of Government Affairs
American Small Business League
3910 Cypress Dr.
Petaluma CA, 94954
(707) 789-9575

4/1/2010

ZOKB

American

small
business

League

98% of all U.S. firms have less than 100 employees

April 14, 2010

Headquarters, Defense Contract Audit Agency
Attn: CMR, FOIA Service Center
8725 John J. Kingman Road, Suite 2135
Fort Belvoir, VA 22060-6219

Re: Freedom of Information Act Appeal

Dear FOIA Officer:

On April 1, 2010, I requested that a copy of documents containing the following information be provided to me:

- The most recent completed audit conducted by the DCAA.

To clarify, I am requesting documents containing the most recent completed postaward contract audit conducted by the DCAA Headquarters.

On April 1, 2010 I received a phone call from someone in the DCAA Headquarters office informing me that DCAA cannot provide the documents being requested as they are turned over the appropriate agency upon completion of the audit. I asked that this response be sent in writing for my records; which to date has not been received.

I am appealing this decision based on the grounds that it is unacceptable the DCAA does not maintain copies of the audits conducted by the agency itself. Therefore, I restate my request for documents containing the most recent completed postaward contract audit conducted by the DCAA Headquarters.

Thank you for your consideration of this appeal.

Sincerely,



Kevin Baron, Director of Government Affairs

B



IN REPLY REFER TO

DEFENSE CONTRACT AUDIT AGENCY

DEPARTMENT OF DEFENSE

8725 JOHN J. KINGMAN ROAD, SUITE 2135
FORT BELVOIR, VA 22060-6219CM 502.4
I-10-050-H

May 7, 2010

Mr. Kevin Baron
Director of Government Affairs
American Small Business League
3910 Cypress Drive
Petaluma, CA 94954

Dear Mr. Baron:

This letter is a final response to your Freedom of Information Act (FOIA) request dated April 20, 2010. You are requesting a copy of "the most recent completed audit conducted by DCAA."

We have identified one DCAA audit report responsive to your request. Our mission is to produce audit reports for contracting offices; audit reports are the property of DoD contracting offices and their release is at the sole discretion of those offices. In accordance with the Department of Defense FOIA referral policy, therefore, I have referred your request and documents to the agency listed below and that office will provide you with appeal procedures for any information they withhold from you. A copy of the referral memorandum is enclosed:

330th Fighter Sustainment Group
FSG/LFKA
235 Byron Street
Suite 19A
Robins AFB, GA 31098-1670

Should you disagree with the finding cited above, you may appeal in writing within 60 calendar days from the date of this letter to Mr. J. Philip Anderson, Assistant Director, Resources, at the above address. If you have further questions, please contact the DCAA Information and Privacy Adviser at 703-767-1022.

Sincerely,

A handwritten signature in black ink, appearing to read "For Peter [unclear]", is written over the typed name.

Darryl R. Aaron
Chief

Information and Records Management Branch

Enclosure:

C

Enclosure

C'



IN REPLY REFER TO

DEFENSE CONTRACT AUDIT AGENCY
DEPARTMENT OF DEFENSE
8725 JOHN J. KINGMAN ROAD, SUITE 2135
FORT BELVOIR, VA 22060-6219

CM 502.4
I-10-050-H

May 7, 2010

MEMORANDUM FOR 330th FIGHTER SUSTAINMENT GROUP
FSG/LFKA
235 BYRON STREET, SUITE 19A
ROBINS AFB, GA 31098-1670

SUBJECT: Freedom of Information Act (FOIA) Request I-10-050-H

DCAA's regulations for implementing the Freedom of Information Act (FOIA) require that requests for audit reports be referred to the cognizant Contracting Officer for release determination. These regulations are consistent with the Department of Defense Freedom of Information Act program.

We have identified one audit report, controlled by your office, as responsive to the enclosed Freedom of Information Act request submitted by Mr. Kevin Baron from the American Small Business League.

Therefore, we are referring this request to you for a release determination and direct response to the requester. A copy of the audit report is enclosed as Enclosure 2. Please copy us on your response to the requester.

The requester has been notified of this referral.

If you have any questions, please contact the DCAA Information and Privacy Adviser, at (703) 767-1022.

A handwritten signature in black ink, appearing to read "For Patrick", is written over the typed name.

Darryl R. Aaron
Chief

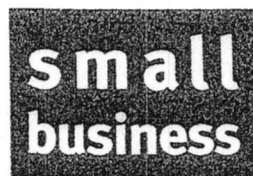
Information and Records Management Branch

Enclosures (2):

1. DCAA I-10-050 FOIA Request Letter
2. DCAA Audit Report No. 2191-2008S42000001

20m

American



League

98% of all U.S. firms have less than 100 employees

June 11, 2010

Headquarters, Defense Contract Audit Agency
Attn: Mr. J Phillip Anderson, Assistant Director, Resources
8725 John J. Kingman Road, Suite 2135
Fort Belvoir, VA 22060-6219

330th Fighter Sustainment Group
FSG/FLKA
235 Byron Street, Suite 19A
Robins AFB, GA 31098-1670

Re: Freedom of Information Act Appeal

Dear FOIA Officer:

On April 1, 2010, I requested that a copy of documents containing the following information be provided to me:

- The most recent completed audit conducted by the DCAA.

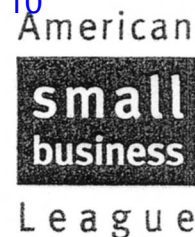
To clarify, I am requesting documents containing the most recent completed postaward contract audit conducted by the DCAA Headquarters.

On April 1, 2010 I received a phone call from someone in the DCAA Headquarters office informing me that DCAA cannot provide the documents being requested as they are turned over the appropriate agency upon completion of the audit. I asked that this response be sent in writing for my records, which to date has not been received.

On April 14, 2010, I sent a letter of appeal based on the conversation referenced above that it would be unreasonable for DCAA to not have the documents requested.

On April 19, 2010, I received a call from Mr. Keith Mastromichalis to inform me that the DCAA never received the initial request and to please refile.

P



On April 20, 2010, I sent an email to Mr. Keith Mastromichalis, requesting clearly the documents above and to clarify.

I received a letter dated April 22, 2010 from Mr. Darryl R. Aaron informing me that my request had been received and was being processed.

I received a letter dated May 7, 2010 from Mr. Darryl R. Aaron informing me that responsive records have been found and the request has been referred to the AFB listed above.

To date, I have not received a response or confirmation from the AFB listed above, nor have I received the documents being requested, therefore I am appealing this decision. To be frank, at this point, if I do not receive a response or the documents being requested within 10 business days of the date on this letter, we will pursue alternative legal action. I request that all correspondence from this point forward be in writing. You can send them via email to kbaron@asbl.com or by mail.

Thank you for your consideration of this appeal.

Sincerely,

A handwritten signature in black ink, appearing to read "K. Baron", with a long horizontal flourish extending to the right.

Kevin Baron
Director of Government Affairs
American Small Business League